



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 300**

**[Docket No. 221129-0251]**

**RIN 0648-BK93**

#### **Fisheries off West Coast States; Pacific Halibut Fisheries; Permitting and Management**

#### **Regulations for Area 2A Pacific Halibut Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** Under the authority of the Northern Pacific Halibut Act of 1982, this final rule implements a permitting system for the Pacific halibut commercial and recreational charter halibut fisheries in International Pacific Halibut Commission (IPHC) regulatory Area 2A (Washington, Oregon, and California). This action also establishes a regulatory framework for the Area 2A Pacific halibut directed commercial fishery that, consistent with the allocations and coastwide season dates set by the IPHC, allows NMFS to annually determine dates and times the fishery will be open and set harvest limits for those periods of time. These permitting and management activities for Area 2A were previously performed by the IPHC; through this final rule, NMFS will now implement these Area 2A-specific permitting and management activities.

**DATES:** This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Additional information regarding this action may be obtained by contacting the Sustainable Fisheries Division, NMFS West Coast Region, 501 W Ocean Boulevard, Suite 4200, Long Beach, CA 90802. For information regarding all halibut fisheries and general regulations

not contained in this rule, contact the International Pacific Halibut Commission, 2320 W Commodore Way Suite 300, Seattle, WA 98199-1287.

**FOR FURTHER INFORMATION CONTACT:** Joshua Lindsay, phone: 562-980-4034, fax: 562-980-4018, or e-mail: [joshua.lindsay@noaa.gov](mailto:joshua.lindsay@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

*Background*

The Northern Pacific Halibut Act of 1982 (Halibut Act), 16 U.S.C. 773–773k, gives the Secretary of Commerce (Secretary) general responsibility for implementing the provisions of the Convention between Canada and the United States for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Halibut Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention, signed at Washington, D.C., on March 29, 1979. The Halibut Act requires that the Secretary shall adopt regulations as may be necessary to carry out the purposes and objectives of the Halibut Convention and Halibut Act (16 U.S.C. 773c). The Assistant Administrator for Fisheries, NOAA, on behalf of the IPHC, publishes annual management measures governing the U.S. Pacific halibut fishery that have been recommended by the IPHC and accepted by the Secretary of State, with concurrence from the Secretary of Commerce. These management measures include, but are not limited to, coastwide and area-specific mortality limits (also known as allocations and subarea allocations), coastwide season dates, gear restrictions, Pacific halibut size limits for retention, and logbook requirements. The IPHC apportions mortality limits for the Pacific halibut fishery among regulatory areas: Area 2A (Washington, Oregon, and California), Area 2B (British Columbia), Area 2C (Southeast Alaska), Area 3A (Central Gulf of Alaska), Area 3B (Western Gulf of Alaska), and Area 4 (subdivided into 5 areas, 4A through 4E, in the Bering Sea and Aleutian Islands of Western Alaska). In addition to, and not in conflict with, approved IPHC regulations, as provided in the Halibut Act, the Regional Fishery Management Councils may develop, and the Secretary of Commerce may implement, regulations governing harvesting privileges among U.S. fishermen

in U.S. waters (16 U.S.C. 773c(c)). The Pacific Fishery Management Council (Council) has exercised this authority by developing a catch sharing plan guiding the allocation of halibut and management of recreational (sport) fisheries for the IPHC's regulatory Area 2A. The Council's Catch Sharing Plan guides tribal, non-tribal commercial, and recreational halibut fishing off the U.S. west coast by prescribing an allocation formula for the allowable catch, and by describing the general season structure of the fisheries. Since 1988, NMFS has approved catch sharing plans and implemented annual regulations consistent with the catch sharing plans in the IPHC regulatory Area 2A. In 1995, NMFS approved a Council-recommended, long-term Catch Sharing Plan (60 FR 14651; March 20, 1995). The Council has recommended, and NMFS has approved adjustments to the Catch Sharing Plan each year after discussion at the September and November Council meetings to address the changing needs of these fisheries.

Prior to this action, the IPHC regulated and managed certain aspects of the commercial and recreational charter fisheries in Area 2A. The IPHC required vessels to obtain a license from the IPHC to participate in either the recreational charter fishery or the non-tribal commercial fishery for Pacific halibut in Area 2A. In the context of this rule, the term "license" is synonymous with "permit." The IPHC also set management measures for the non-tribal directed commercial Pacific halibut fishery (directed commercial fishery) in Area 2A, including fishing periods and associated fishing period limits which were announced by the IPHC. The proposed rule for this action included additional background on past management practices of the IPHC and history of certain regulatory activities transitioning from IPHC to NMFS, including Council recommendations associated with this action. Those details are not repeated here. For additional information on this action, please refer to the proposed rule (87 FR 44318; July 26, 2022).

Under this action, NMFS is assuming responsibility for issuing vessel permits to fish for Pacific halibut in commercial and recreational charter fisheries in Area 2A, and for issuing annual management measures for the directed commercial fishery. Specifically, this action enables NMFS to issue permits for Area 2A vessels participating in the recreational charter

fishery and three non-tribal commercial fisheries: a directed commercial fishery, incidental catch of Pacific halibut in the sablefish fishery, and incidental catch of Pacific halibut in the salmon troll fishery. This action also enables NMFS to set management measures for the non-tribal directed commercial Pacific halibut fishery (directed commercial fishery), including fishing periods and associated fishing period limits. A fishing period is the period of time during the annual halibut season set by the IPHC when fishing for Pacific halibut is allowed and may span multiple days. A fishing period limit is the maximum amount of Pacific halibut that may be retained and landed by a vessel during one fishing period, and each vessel may only retain Pacific halibut up to the fishing period limit for its vessel class. These actions are in addition to actions NMFS already undertakes, such as issuing annual management measures for the Area 2A recreational fisheries (applicable to both charter and private anglers), consistent with the recommendations from the Council and the framework in the Council's Catch Sharing Plan.

#### *Permitting for Commercial and Recreational Charter Vessels*

Prior to implementation of this rule, no person could fish for Pacific halibut from a vessel, nor possess Pacific halibut on board a vessel, used either for commercial fishing or as a recreational charter vessel in Area 2A, unless the IPHC issued a permit valid for fishing in Area 2A to that vessel. Under this final rule, NMFS maintains the requirement for vessels to obtain a permit to fish for Pacific halibut in Area 2A and implements a NMFS permitting process. Under this action, NMFS will use a web-based application with digital submission and delivery of the permit applications, and will allow participants to provide either digital or paper proof of permit upon request. NMFS is requiring that permit applications be received by the following dates: (1) March 1 for incidental catch during the salmon troll fishery; (2) March 1 for incidental catch during the sablefish fishery; (3) February 15 for the directed commercial fishery; and (4) 15 days prior to participation in the recreational fishery for recreational charter vessels.

NMFS notes that the permit application deadlines for the incidental salmon and sablefish fisheries are two weeks earlier than the deadlines previously required by the IPHC (prior to 2020,

the incidental sablefish permit deadline was March 15), and are one month before the fisheries open on April 1. The deadline for the directed commercial fishery permit applications is more than two months earlier than the previous IPHC deadline for this fishery. The earlier application deadlines ensure adequate time for NMFS to issue permits in advance of the fishery season start dates and to consider the number of applications when determining fishing period limits for the directed commercial fishery. NMFS will issue permits for all applications submitted with the required information and by the applicable deadline under this action. NMFS is requiring application information in addition to what the IPHC required; specifically, those applying for directed commercial fishery permits must provide vessel length documentation from either the U.S. Coast Guard Documentation Form, state registration form, or a current marine survey. Fishery participants must obtain a new permit each year.

The Regional Administrator may charge fees to cover administrative expenses related to processing and issuance of permits, processing change in ownership or change in vessel registration, divestiture, and appeals of permits. The amount of the fee would be determined in accordance with the NOAA Finance Handbook available at

([https://www.corporateservices.noaa.gov/finance/documents/NOAAFinanceHBTOC\\_09.06.19.pdf](https://www.corporateservices.noaa.gov/finance/documents/NOAAFinanceHBTOC_09.06.19.pdf)) and specified on the application form. The fee may not exceed the administrative costs and must be submitted with the application for the application to be considered complete.

#### *Directed Commercial Fishery*

The non-tribal directed commercial Pacific halibut fishery is prosecuted in the area south of Point Chehalis, WA (46°53.30' N lat.). This fishery typically operates from late June through August, with fishing periods every other week until the Area 2A directed commercial fishery allocation has been or is projected to be reached. Under this final action, NMFS, instead of the IPHC, will implement annual management measures for the directed commercial fishery. Specifically, NMFS will continue to manage the fishery through a series of fishing periods with fishing period limits based on the directed commercial fishery allocation determined by vessel

class, and implement those directed commercial fishing period(s) and fishing period limits through proposed and final rules published annually in the **Federal Register** to ensure the directed commercial fishery allocation is not exceeded.

NMFS will consider any Council recommendations for the annual management measures, as well as public comments received on the proposed rule, when it implements fishing periods, fishing period limits, and any other directed commercial management measures. As noted previously, the Council has stated its intent to develop recommendations on annual directed fishery measures (*e.g.*, timing and duration of the fishing periods) through the same September and November meeting process currently utilized to provide recommendations to the IPHC at its annual meeting.

NMFS will determine directed commercial management measures, including fishing periods and fishing period limits, using similar decision criteria that the IPHC used to set fishing periods and fishing period limits. The annual rulemaking process may include the announcement of more than one fishing period. In determining fishing period limits, NMFS will consider the directed commercial allocation, vessel class, the number of fishery permit applicants and projected number of participants per vessel class, the average catch of vessels compared to past fishing period limits, and other relevant factors. As did the IPHC in setting vessel limits, NMFS will consider the fact that smaller vessels have lesser capacities to carry gear and Pacific halibut than larger vessels. The intent of these fishing period limits is to ensure that the Area 2A commercial directed fishery does not exceed the directed commercial allocation, while also providing fair and equitable access across participants to an attainable amount of harvest.

As noted previously, NMFS is establishing a permit application deadline for the directed commercial fishery of February 15, which is more than two months earlier than the date used by the IPHC. NMFS is setting this earlier deadline to ensure that directed commercial fishery management measures are in place prior to the initial fishing period(s), traditionally opening in late June. The timing for the annual management measures rule with directed commercial

management measures will allow for consideration of any Council recommendations that take place at the September and November meetings, public comments by stakeholders, and the Area 2A catch limit recommendation from the IPHC annual meeting. NMFS intends to annually publish a proposed rule after the Area 2A directed commercial allocation is determined by the IPHC (usually in late January or early February), and will publish a final rule as far in advance of the first directed commercial fishing period as practicable.

During the annual fishing season, NMFS may establish additional fishing periods beyond those implemented at the start of the fishing year. For example, if the fishery has not attained nor is projected to have attained the directed commercial allocation during the initial directed commercial fishing period(s), NMFS will determine whether additional fishing period(s) are warranted. The decision to add fishing periods beyond those announced in the annual rule establishing the season's management measures will be based on landings information from state fish tickets collected during the initial fishing period(s), and any such decision will have the dual objectives of providing additional opportunity to fishery participants while limiting the risk of exceeding the directed commercial allocation. As soon as practicable after the fishing periods announced in the annual management measures rule and after landings data are analyzed, additional fishing period(s) and applicable fishing period limits will be announced in the **Federal Register** if the Regional Administrator determines that enough allocation remains to provide additional opportunity across all participants and vessel classes. It is NMFS' expectation that the timing of any additional fishing periods will be similar to past IPHC practice and would occur two weeks after the conclusion of the last fishing period. In the event NMFS takes inseason action to add fishing period(s), fishing period limits will be set at the same amount for each vessel class. Generally, fewer vessels participate in each fishing period as the season progresses (that is, the first fishing period has the highest level of participation and most pounds landed, followed by the second fishing period, etc.). During any additional fishing periods, NMFS will set vessel limits equal across all sizes because the number of vessels in each vessel class varies

by fishing period and year and participants may choose to engage in any fishing period; thus, the number of participants per vessel class can be unpredictable.

### *Comments and Responses*

NMFS published the proposed rule on July 26, 2022 (87 FR 44318). NMFS accepted public comments on the permitting system and the directed commercial management measure framework through August 25, 2022. NMFS received one comment, from the Oregon Department of Fish and Wildlife (ODFW).

*Comment:* ODFW noted the earlier permit application deadlines compared to those of the IPHC, and posed questions related to how NMFS intends to provide information and outreach to the public on the new deadlines. These questions included whether there will be allowance for late applications or an appeals process for late or denied applications, as well as information on when and where permit applications will be made available. ODFW also commented on the timeframe of additional openings, whether it would be days, weeks, or months between openings, noting that fish buyers have developed markets based on the timing of openings, and how vessel operators must arrange logistics for the Pacific halibut fishery (*e.g.*, for procuring ice and bait) and develop business plans for participating in other fisheries.

*Response:* NMFS recognizes that certain components of this action, including the permit application deadlines, are different from past IPHC requirements. NMFS intends to utilize a variety of communication methods (*e.g.*, email listserv, web pages and bulletins, and telephone hotline) to ensure that the regulated public are fully aware of the permit deadlines and how to apply, and to perform outreach in coordination with the IPHC, Council, and the states. An appeals process for permit denials was included in the proposed rule and remains unchanged in this final rule.

In the event NMFS takes inseason action to add fishing periods, the intervening times between fishing periods is expected to be similar to those in previous years. NMFS will provide as much detail about fishing periods as is practicable in the annual rulemaking ahead of each



fishing season in order to facilitate market and fishery participants' planning for the upcoming fishing year.

#### *Changes from the Proposed Rule*

There were no substantive changes made between the proposed rule and this final rule. NMFS made minor textual edits for clarity between the proposed and this final rule.

#### **Classification**

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Council, the North Pacific Fishery Management Council, and the Secretary of Commerce. Section 5 of the Halibut Act (16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. This action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Washington, Oregon, and California.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act. The factual basis for the certification was published in the proposed rule and is not repeated here. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This rule extends the current collection titled "Northwest Region Federal Fisheries Permits" (OMB Control Number 0648-0203) and also changes the existing requirements for the collection of information 0648-0203 by adding a Pacific halibut permit for the recreational

charter fishery, the directed commercial fishery, and incidental catch of halibut in the salmon troll and sablefish fisheries. This change will increase the number of respondents for this collection by 550 respondents annually. It will also increase the cost of the collection by \$17,050. Public reporting burden for the new Pacific halibut permits is estimated to average 20 minutes per respondent, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Written comments and recommendations for this information collection should be submitted at the website [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by using the search function and entering either the title of the collection or the OMB Control Number 0648-0203.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### **List of Subjects in 50 CFR Part 300**

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

Dated: November 29, 2022

---

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300, subpart E, is amended as follows:

## **PART 300—INTERNATIONAL FISHERIES REGULATIONS**

### **Subpart E—Pacific Halibut Fisheries**

1. The authority citation for part 300, subpart E, continues to read as follows:

**Authority:** 16 U.S.C. 773-773k.

2. In § 300.61, add definitions for “Fishing period,” “Fishing period limit,” “Permit,” “Vessel class” in alphabetical order to read as follows:

#### **§ 300.61 Definitions.**

\* \* \* \* \*

*Fishing period* means, for purposes of commercial fishing in Commission regulatory Area 2A, dates and/or hours when fishing for Pacific halibut in Area 2A is allowed.

*Fishing period limit* means, for purposes of commercial fishing in Commission regulatory Area 2A, the maximum amount of Pacific halibut that may be retained and landed by a vessel during one fishing period in Area 2A.

\* \* \* \* \*

*Permit* means, for purposes of commercial fishing in Commission regulatory Area 2A, a Pacific halibut fishing permit for Area 2A issued by NMFS pursuant to § 300.63(f).

\* \* \* \* \*

*Vessel class* means, for purposes of commercial fishing in Commission regulatory Area 2A, a group of vessels within a specific range of overall length (in feet) (46 CFR 69.9), as designated by the letters A-H pursuant to § 300.63(g).

3. In § 300.63, add paragraphs (f) and (g) to read as follows:

**§ 300.63 Catch sharing plan and domestic management measures in Area 2A.**

\* \* \* \* \*

(f) *Pacific Halibut Permits for IPHC Regulatory Area 2A—(1) General.* (i) This section applies to persons and vessels that fish for Pacific halibut, or land and retain Pacific halibut, in IPHC regulatory area 2A. No person shall fish for Pacific halibut from a vessel, nor land or retain Pacific halibut on board a vessel, used either for commercial fishing or as a recreational charter vessel in IPHC regulatory area 2A, unless the NMFS West Coast Region has issued a permit valid for fishing in IPHC regulatory area 2A for that vessel.

(ii) A permit issued for a vessel operating in the Pacific halibut fishery in IPHC regulatory area 2A shall be valid for one of the following, per paragraph (d) of this section:

(A) The incidental catch of Pacific halibut during the salmon troll fishery specified in paragraph (b)(2) of this section;

(B) The incidental catch of Pacific halibut during the sablefish fishery specified in paragraph (b)(3) of this section;

(C) The non-tribal directed commercial fishery during the fishing periods specified in paragraph (g)(1) of this section;

(D) Both the incidental catch of Pacific halibut during the sablefish fishery specified in paragraph (b)(3) of this section and the non-tribal directed commercial fishery during the fishing periods specified in paragraph (g)(1) of this section; or

(E) The recreational charter fishery.

(iii) A permit issued under paragraph (f) of this section is valid only for the vessel for which it is registered. A change in ownership, documentation, or name of the registered vessel, or transfer of the ownership of the registered vessel will render the permit invalid.

(iv) A vessel owner must contact NMFS if the vessel for which the permit is issued is sold, ownership of the vessel is transferred, the vessel is renamed, or any other reason for which

the documentation of the vessel is changed as the change would invalidate the current permit. A new permit application is required if there is a change in any documentation of the vessel. To submit a new permit application, follow the procedures outlined under paragraph (f)(2) of this section. If the documentation of the vessel is changed after the deadline to apply for a permit has passed as described at paragraph (f)(2)(ii) of this section, the vessel owner may contact NMFS and provide information on the reason for the documentation change and all permit application information described at paragraph (f)(2) of this section. NMFS may issue a permit, or decline to issue a permit and the applicant may appeal per paragraph (f)(3) of this section.

(v) A permit issued under paragraph (f) of this section must be carried on board that vessel at all times and the vessel operator shall allow its inspection by any authorized officer. The format of this permit may be electronic or paper.

(vi) No individual may alter, erase, mutilate, or forge any permit or document issued under this section. Any such permit or document that is intentionally altered, erased, mutilated, or forged is invalid.

(vii) Permits issued under paragraph (f) of this section are valid only during the calendar year (January 1–December 31) for which it was issued.

(viii) NMFS may suspend, revoke, or modify any permit issued under this section under policies and procedures in title 15 CFR part 904, or other applicable regulations in this chapter.

(2) *Applications*--(i) *Application form*. To obtain a permit, an individual must submit a complete permit application to the NMFS West Coast Region Sustainable Fisheries Division (NMFS) through the NOAA Fisheries Pacific halibut webpage at <https://www.fisheries.noaa.gov/west-coast/commercial-fishing/west-coast-fishing-permits>. A complete application consists of:

(A) An application form that contains valid responses for all data fields, including information and signatures.

(B) A current copy of the U.S. Coast Guard Documentation Form or state registration form or current marine survey.

(C) Payment of required fees as discussed in paragraph (f)(2)(iv) of this section.

(D) Additional documentation NMFS may require as it deems necessary to make a determination on the application.

(ii) *Deadlines.* (A) Applications for permits for the directed commercial fishery in regulatory area 2A must be received by NMFS no later than 2359 PST on February 15, or by 2359 PST the next business day in February if February 15 is a Saturday, Sunday, or Federal holiday.

(B) Applications for permits, which allow for incidental catch of Pacific halibut during the salmon troll fishery and the sablefish primary fishery in Area 2A, must be received by NMFS no later than 2359 PST March 1, or by 2359 PST the next business day in March if March 1 is a Saturday, Sunday, or Federal holiday.

(C) Applications for permits for recreational charter vessels which allow for catch of Pacific halibut during the recreational fishery must be received a minimum of 15 days before intending to participate in the fishery, to allow for processing the permit application.

(iii) *Application review and approval.* NMFS shall issue a vessel permit upon receipt of a completed permit application submitted on the NOAA Fisheries website no later than the day before the start date of the fishery the applicant selected. If the application is not approved, NMFS will issue an initial administrative decision (IAD) that will explain the denial in writing. The applicant may appeal NMFS' determination following the process at paragraph (f)(3) of this section. NMFS will decline to act on a permit application that is incomplete or if the vessel or vessel owner is subject to sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D.

(iv) *Permit fees.* The Regional Administrator may charge fees to cover administrative expenses related to processing and issuance of permits, processing change in ownership or

change in vessel registration, divestiture, and appeals of permits. The amount of the fee is determined in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs. Full payment of the fee is required at the time a permit application is submitted.

(3) *Appeals*. In cases where the applicant disagrees with NMFS's decision on a permit application, the applicant may appeal that decision to the Regional Administrator. This paragraph (f)(3) describes the procedures for appealing the IAD on permit actions made in this title under this subpart.

(i) *Who may appeal?* Only an individual who received an IAD that disapproved any part of their application may file a written appeal. For purposes of this section, such individual will be referred to as the "permit applicant."

(ii) *Appeal process*. (A) The appeal must be in writing, must allege credible facts or circumstances to show why the criteria in this subpart have been met, and must include any relevant information or documentation to support the appeal. The permit applicant may request an informal hearing on the appeal.

(B) Appeals must be mailed or faxed to: National Marine Fisheries Service, West Coast Region, Sustainable Fisheries Division, ATTN: Appeals, 7600 Sand Point Way NE., Seattle, WA, 98115; Fax: 206-526-6426; or delivered to National Marine Fisheries Service at the same address.

(C) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, and may request additional information to allow action on the appeal.

(D) Upon receipt of sufficient information, the Regional Administrator will decide the appeal in accordance with the permit provisions set forth in this section at the time of the application, based upon information relative to the application on file at NMFS and any additional information submitted to or obtained by the Regional Administrator, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such

other considerations as the Regional Administrator deems appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons for the decision, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(E) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing to the applicant. The appellant, and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(F) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's decision will constitute the final administrative action by NMFS on the matter.

(iii) *Timing of appeals.* (A) For permit issued under paragraph (f) of this section, if an applicant appeals an IAD, the appeal must be postmarked, faxed, or hand delivered to NMFS no later than 60 calendar days after the date on the IAD. If the applicant does not appeal the IAD within 60 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(B) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Regional Administrator for good cause, either upon his or her own motion or upon written request from the appellant stating the reason(s) therefore.



(iv) *Address of record.* For purposes of the appeals process, NMFS will establish as the address of record, the address used by the permit applicant in initial correspondence to NMFS. Notifications of all actions affecting the applicant after establishing an address of record will be mailed to that address, unless the applicant provides NMFS, in writing, with any changes to that address. NMFS bears no responsibility if a notification is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS.

(v) *Status of permits pending appeal.* (A) For all permit actions, the permit registration remains as it was prior to the request until the final decision has been made.

(B) [Reserved]

(g) *Non-tribal directed commercial fishery management.* Each year a portion of regulatory area 2A's overall fishery limit is allocated consistent with the Pacific Fishery Management Council's Catch Sharing Plan to the non-tribal directed commercial fishery and published pursuant to § 300.62. The non-tribal directed commercial fishery takes place in the area south of Point Chehalis, WA (46°53.30' N lat.).

(1) *Management measures.* Annually, NMFS will determine and publish in the **Federal Register** annual management measures for the upcoming fishing year for the non-tribal directed commercial fishery. This will include dates and lengths for the fishing periods for the Area 2A non-tribal directed commercial fishery, as well as the associated fishing period limits.

(i) *Fishing periods.* NMFS will determine the fishing periods, *e.g.* dates and/or hours that permittees may legally harvest halibut in Area 2A, on an annual basis. This determination will take into account any recommendations provided by the Pacific Fishery Management Council and comments received by the public during the public comment period on the proposed annual management measures rule. The intent of these fishing periods is to ensure the Area 2A Pacific halibut directed commercial allocation is achieved but not exceeded.

(ii) *Fishing period limits.* NMFS will establish fishing period limits, *e.g.* the maximum amount of Pacific halibut that a vessel may retain and land during a specific fishing period, and

assign those limits according to vessel class for each fishing period. Fishing period limits may be different across vessel classes (except as described in paragraph (g)(1)(iii) of this section). NMFS will determine fishing period limits following the considerations listed in paragraph (g)(1)(ii)(A) of this section. The intent of these fishing period limits is to ensure that the Area 2A commercial directed fishery does not exceed the directed commercial allocation, while attempting to provide fair and equitable access across fishery participants to an attainable amount of harvest. The limits will be published in annual management measures rules in the **Federal Register** along with a description of the considerations used to determine them.

(A) *Considerations*. When determining fishing period(s) and associated fishing period limits for the directed commercial fishery, NMFS will consider the following factors:

- (1) The directed commercial fishery allocation;
- (2) Vessel class;
- (3) Number of fishery permit applicants and projected number of participants per vessel class;
- (4) The average catch of vessels compared to past fishing period limits;
- (5) Other relevant factors.

(B) *Vessel classes*. Vessel classes are based on overall length (defined at 46 CFR 69.9) shown in the following table:

Table 1 to paragraph (g)(1)(ii)(B)

Overall Length (in feet)	Vessel Class
1–25	A
26–30	B
31–35	C
36–40	D
41–45	E
46–50	F

51–55	G
56+	H

(iii) *Inseason action to add fishing periods and associated fishing period limits.* Fishing periods in addition to those originally implemented at the start of the fishing year may be warranted in order to provide the fishery with opportunity to achieve the Area 2A directed commercial fishery allocation, if performance of the fishery during the initial fishing period(s) is different than expected and the directed commercial allocation is not attained through the initial period(s). If NMFS makes the determination that sufficient allocation remains to warrant additional fishing period(s) without exceeding the allocation for the Area 2A directed commercial fishery, the additional fishing period(s) and fishing period limits may be added during the fishing year. If NMFS determines fishing period(s) in addition to those included in an annual management measures rule is warranted, NMFS will set the fishing period limits equal across all vessel classes. The fishing period(s) and associated fishing period limit(s) will be announced in the **Federal Register** and concurrent publication on the hotline. If the amount of directed commercial allocation remaining is determined to be insufficient for an additional fishing period, the allocation is considered to be taken and the fishery will be closed, as described at paragraph (g)(2) of this section.

(2) *Automatic closure of the non-tribal directed commercial fishery.* The NMFS Regional Administrator or designee will initiate automatic management actions without prior public notice or opportunity to comment. These actions are nondiscretionary and the impacts must have been previously been taken into account.

(i) If NMFS determines that the non-tribal directed commercial fishery has attained its annual allocation or is projected to attain its allocation if additional fishing was to be allowed, the Regional Administrator will take automatic action to close the fishery, via announcement in

the **Federal Register** and concurrent notification on the telephone hotline at 206-526-6667 or 800-662-9825.

(ii) [Reserved]

[FR Doc. 2022-26325 Filed: 11/30/2022 4:15 pm; Publication Date: 12/5/2022]